



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-7540

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208824

The City of McAllen (the "city") received a request for 1) "a copy of the master list provided to employees of the Public Utility Board that informs them not to shut-off the water, for non or late payment or under any circumstances, of the citizens who are on the master list" and 2) a copy of all water utility bills of certain named individuals. You indicate that you have released some of the requested information, but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. You assert that some of the requested information is confidential under section 182.052 of the Utility Code, which provides, in relevant part:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information

confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

Util. Code § 182.052(a). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note that the names of customers are not included in the definition of personal information, and therefore are not confidential under section 182.052 of the Utilities Code. Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054. You have provided no information to allow us to conclude that these exceptions apply in this instance.

The submitted information contains billing information pertaining to individual customers' volume or units of water consumption and amounts billed to or collected for usage. You state, and provide documentation showing, that one of the individuals to whom the billing information pertains has timely elected to keep his public utility information confidential under section 182.052(a) of the Utilities Code. However, section 182.052(a) provides that the utility may disclose a customer's billing information, notwithstanding the customer's request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. We are unable to determine from the information provided whether the primary source of water for the city's utility is a sole-source designated aquifer. Therefore, we make the following determination: because the customer at issue requested that billing information be kept confidential prior to the date the city received the present request, if the primary source of water for the city utility is not a sole-source designated aquifer, we determine that such information is confidential under section 182.052 of the Utilities Code and must be withheld. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). If, however, the primary source of water is a sole-source aquifer, the city has the discretion to release billing information, notwithstanding the customer's timely request for confidentiality. We have marked billing information that may be confidential pursuant to section 182.052(a) of the Utilities Code.

You argue that the remaining submitted information contains information subject to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their

employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the submitted information is held by the city as a utility provider, not an employer. Consequently, we find that the none of the remaining submitted information may be withheld under section 552.117.

In summary, if the primary source of water for the city utility is not a sole-source designated aquifer, the city must withhold as confidential the billing information we have marked under section 552.101 in conjunction with section 182.052 of the Utilities Code. If, however, the primary source of water is a sole-source aquifer, the city has the discretion to release the marked billing information, notwithstanding the customer's timely request for confidentiality. The city must release all remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

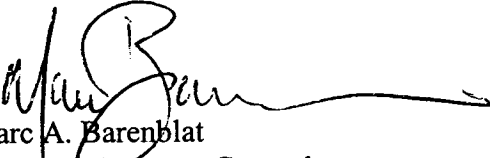
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 208824

Enc. Submitted documents

c: Ms. Patsy Rogers
Citizens for a Better and Safer McAllen
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(w/o enclosures)